

March 21, 1985

Honorable Max Baucus
United States Senate
Washington, D.C.20510

Dear Senator Baucus:

This letter is in response to a request which you received from one of your constituents, Mr. N.E. Vosburg, regarding the definition of solid waste, a final rule recently promulgated by EPA pursuant to the Resource Conservation and Recovery Act (RCRA) (see enclosure). In his letter, Mr. Vosburg states that the Agency has ignored the law by defining scrap metal as a solid waste. Mr. Vosburg's primary concern is that scrap metal is commonly recycled for its metal content and, thus, he believes that these materials are not wastes but rather valuable materials.

As you know, EPA takes quite seriously its obligation to comply with the legislative mandates of Congress. In this particular situation, the definition of solid waste included in the statute (as enacted in 1976) did not explicitly state that a material being recycled (or destined for recycling) is a solid waste and, if hazardous, a hazardous waste. However, we believe that if one were to read the definition in conjunction with other parts of the statute and with the legislative history, we believe it's clear that Congress indeed intended that materials being recycled or held for recycling can be wastes and, if hazardous, hazardous wastes. (Appendix A to the proposed rule regarding the definition of solid waste sets forth the Agency's legal basis for asserting jurisdiction under Subtitle C of RCRA over materials being recycled and is enclosed for your information.) In any event, the recent Hazardous and Solid Waste Amendments of 1984 (HSWA) appear to have settled this question by explicitly requiring EPA to adopt "standards applicable to the legitimate use, reuse, recycling, and reclamation of (hazardous) wastes" (see RCRA amended Section 3001 (d) (2)). We, therefore, disagree with Mr. Vosburg as well as the statement made by the National Association of Recycling Industries (NARI) in their bulletin which states that "...it is concerned with the EPA position in flaunting the new Congressional law specifically excluding recycled metals from the definition of solid waste," and believe that we do have the authority under Subtitle C--the hazardous waste provisions of RCRA--to regulate materials being recycled as hazardous waste.

At the same time, we also believe that Congress intended that our authority over recycled materials under Subtitle C of RCRA be limited to those recycled materials that also are hazardous (i.e., those materials that either exhibit one or more of the hazardous waste characteristics or is specifically listed in Subpart D of Part 261). Therefore, in the final rule, we adopted a clarifying provision in 40 CFR §261.1 (b) which states that the

rule "...does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled." This language is modeled after Section 8 of H.R. 2867 (even though this language was not included in the final RCRA Amendments of 1984) and makes clear that the recycling of non-hazardous scrap metal (or any other non-hazardous secondary material) is totally unaffected by the new solid waste regulation.

Finally, it should also be pointed out that although we have authority over hazardous scrap metal that is recycled, the Agency has decided not to regulate hazardous scrap metal that is being reclaimed. We believe that further studies need to be conducted to determine the hazardousness of scrap metal, the modes of scrap management by collection centers and by end reclaimers, the marketing arrangements in the industry, the regulatory impacts if regulation should be necessary, and whether tailored regulations can or should be developed for hazardous scrap metal. Until our investigations are completed, we are deferring regulation of hazardous scrap metal (which NARI acknowledges in their bulletin).

Please feel free to give me a call if I can be of any further assistance.

Sincerely yours,

Jack W. McGraw
Acting Assistant Administrator

February 27, 1985

Mr. Gregg Ward
Director
Office of Congressional Liaison
Environmental Protection Agency
1401 M. Street, S.W.
Washington, D.C. 20460

Dear Mr. Ward:

Enclosed is a copy of a letter from one of my constituents regarding the definition of "solid waste" in the Resource Conservation and Recovery Act.

It would be greatly appreciated if you could respond to his concerns.

I look forward to hearing from you in the near future. If you should have any further questions, please contact my staff person, Nancy Hadley at 224-2651.

Thank you for your time and consideration in this matter. With best personal regards, I am

Sincerely yours,

Enclosure